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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/945,378	08/31/2001	Michael B. Graham	CGR03-GN003	2155

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EXAMINER	
BEKERMAN, MICHAEL	
ART UNIT	**PAPER NUMBER**
3622	

DATE MAILED: 02/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/945,378	GRAHAM ET AL.	
	Examiner	Art Unit	
	Michael Bekerman	3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-63* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-63* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *24 January 2002* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Specification

1. The abstract of the disclosure is objected to because it exceeds the 150 word limit. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. **Claims 1, 21-23, and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention**.

Regarding claims 1 and 25, the term "and/or" is used in both claims. The limitation should be either "and" or "or", but not both.

Regarding claims 21-23, it is unclear as to what the difference is in the "selecting of content of the next of the plurality of puzzles" in these claims and the "selecting a next of the plurality of puzzles" in the claims to which claims 21-23 depend. Examiner considers both steps to be selecting a next puzzle.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-4, 12-14, 16, 17, 24, 26, 27, 29, 31-37, 45, 50, 51 are rejected under 35 U.S.C. 102(e) as being anticipated by Guyett (U.S. Patent No. 6,764,395). Guyett teaches an advertisement promotional game that includes all of the limitations recited in the above claims.

Regarding claim 1, Guyett teaches the providing of a computerized game to a consumer (Column 2, Lines 39-46). The step of providing the game doesn't include or require execution of the game or any testing. However, Guyett also teaches testing the consumer's ability to recognize a marketing object (Column 2, Lines 39-46), the marketing object consisting of any of a trademark, promoter, product, or service (Column 1, Lines 25-27).

Regarding claims 2 and 3, Guyett teaches recognizing a marketing object (product, service, sponsor, or company) from a partial image (frame or slice) (Column 5, Lines 23-27). The game offered by Guyett is considered to be a puzzle.

Regarding claims 4, 12, 31, 36, and 37, Guyett teaches the playing of a series of games (Column 7, Lines 5-8). Guyett teaches selecting the plurality of games based on demographics (Column 6, Lines 40-42). This reads on providing the next of the plurality based on demographics.

Regarding claims 13 and 32, Guyett teaches puzzle-solving performance as being stored for statistical analysis (to compute payout) (Column 10, Lines 17-20). Game performance is stored for each individual player, and this reads on being stored in accordance with demographic information.

Regarding claim 14, Guyett teaches marketing messages for the game as being displayed based on performance (Figure 14).

Regarding claims 16 and 17, Guyett teaches discount gifts as being given based on puzzle-solving performance and consumer demographics (Figure 14 and Column 10, Lines 21-25). Since the questions are based on demographics, and Figure 14 teaches discount gifts as being available from the sponsors, this reads on demographical discounted gifts.

Regarding claim 24, Guyett teaches presenting the puzzle to the consumer with an associated marketing message (the puzzle itself is a marketing tactic, and inherently presents a message) (Column 4, Lines 8-15).

Regarding claims 26, 27, 29, 34, and 35, Guyett teaches the game as being provided on a computer over the Internet (Column 5, Lines 44-52).

Regarding claims 33, 42, 50, and 60, Guyett teaches providing an interactive advertising message (game or puzzle containing a question) to a consumer (Column 2, Lines 39-46) and gathering data associated with the consumer's interactions with the message (Column 10, Lines 17-20).

Regarding claim 45, Guyett teaches gathering data (player history) related to a commercial entity's products (Column 1, Lines 25-27).

Regarding claim 51, Guyett teaches providing the first letter of an answer, and requiring the player to complete the word to win the game (Figure 13E, Instructions).

Regarding claims 55-59, Guyett teaches displaying one or more product names and querying the user about which advertisement (in which the commercial entity is associated with) pertains to the product (Figure 13B, Instructions). Guyett also teaches displaying commercial logos and querying the user as to which entity the logo pertains (Figure 13H, Instructions).

Regarding claims 60-63, Guyett teaches asking the user to identify partial advertising segments (Column 5, Lines 23-27 and Column 1, Lines 18-19).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. **Claims 28, 30, 44, 46-49, and 52-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guyett (U.S. Patent No. 6,764,395).**

Regarding claims 28 and 30, Guyett teaches the game as taking place on, but not limited to, a computer (Column 5, Lines 44-52). Guyett doesn't specify television and telephone as being two other possible mediums for the game. Official notice is taken that television and telephone are both old and well-known ways of communicating and collecting information from individuals. It would have been obvious to one having

ordinary skill in the art at the time the invention was made to run the game on any media outlet, including interactive television and telephone. This would allow a broader array of users to play the game.

Regarding claims 44 and 46-49, Guyett teaches monitoring player behavior and recording this into a database in connection with advertisements (Column 6, Lines 19-22). Guyett doesn't specify that the game gathers data related to brand type, taglines, product benefits, imagery, and communication language in particular. Official notice is taken that it is old and well-known that advertisements frequently contain brand type, taglines, product benefits, imagery, and communication language. It would have been obvious to one having ordinary skill in the art at the time the invention was made to gather information related not only to advertisements in general, but also related to the above categories. This would allow the advertiser to understand more about how their product is doing in the marketplace.

Regarding claims 52-54, Guyett teaches providing a plurality of phrases for the user to fill-in (1-word phrase corresponding to the commercial entity) (Figure 13E, Instructions). Guyett also teaches determining promoter or trademark owner from an advertisement, meaning there are lots of different companies that advertise through this game (Column 1, Lines 25-27). Guyett doesn't specify a phrase being presented that corresponds to a competitor of a commercial entity. It would have been obvious to one having ordinary skill in the art at the time the invention was made that any company can use Guyett's game as a platform for advertisements, including competing companies.

This would make the game available to more companies and provide more revenue to the game-makers.

Claims 5-11, 15, 20, 38-41, and 43, and as best understood, claims 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guyett (U.S. Patent No. 6,764,395) in view of Forrest (U.S. Patent No. 5,679,075).

Regarding claims 5-9, 11, 15, 21-23, 38-41, and 43, Guyett teaches recording the performance history of a player (Column 10, Lines 13-16). Guyett also teaches a plurality of puzzles, but doesn't teach the providing of a next of the plurality of puzzles based on consumer performance. Forrest teaches an interactive multimedia game using multiple puzzles that gives the user a new puzzle based on a satisfactory performance for the previous puzzle (Column 8, Lines 6-9, and Column 8, Lines 18-19). It would have been obvious to one having ordinary skill in the art at the time the invention was made to select a puzzle for the user based on performance of the user. This would give the player a greater sense of satisfaction. Guyett teaches the playing of a series of games (Column 7, Lines 5-8). Guyett teaches selecting the plurality of games based on demographics (Column 6, Lines 40-42). This reads on providing the next of the plurality based on demographics. The puzzles of Guyett are taken to inherently include marketing messages.

Regarding claim 10, Guyett teaches giving a cash gift based on puzzle-solving performance (Column 10, Lines 13-16).

Regarding claim 20, Guyett teaches providing a cumulative indication of the consumer's puzzle solving performance (Column 4, Lines 13-15).

Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Guyett (U.S. Patent No. 6,764,395) in view of Lipin (U.S. Pub No. 2004/0225558).

Regarding claim 25, Guyett teaches an advertising gaming system played over the Internet. Guyett doesn't teach providing the ability to notify other consumers about the game. Lipin teaches an affiliate program being offered by a website that would give affiliates money for every hit the affiliate generates (Paragraph 0027, Sentences 1-2). It would have been obvious to one having ordinary skill in the art at the time the invention was made to offer an affiliate program for users with websites that want to refer other people to the game site. Not only would this generate more traffic, but it would also supply the game makers with information about how many consumers have been notified of the game.

Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guyett (U.S. Patent No. 6,764,395) in view of Forrest (U.S. Patent No. 5,679,075), and further in view of Lynn (U.S. Patent No. 6,595,859).

Regarding claims 18 and 19, neither Guyett nor Forrest teaches presenting a marketing message or a correct answer when the user loses. Lynn teaches an internet game that, after a loss, gives an advertisement integrated onto the same page as a message revealing that the user was close to winning. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a marketing message and a correct answer to the puzzle when the user loses. This would allow the user to know what they did wrong, while also providing an advertisement for more revenue to be gained by the game-makers.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following references are cited to further show the state of the art with respect to advertising during online game play:

U.S. Pub No. 2002/0013174 to Murata

U.S. Patent No. 6,697,844 to Von Kohorn

U.S. Patent No. 6,928,414 to Kim

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bekerman whose telephone number is (571) 272-3256. The examiner can normally be reached on Monday - Friday, 7:30 - 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric W. Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MB

JEFFREY D. CARLSON
PRIMARY EXAMINER